

## ST 03-0201-GIL 12/23/2003 EXEMPT ORGANIZATIONS

Organizations that qualify as exclusively religious, charitable, or educational can apply to the Illinois Department of Revenue to obtain tax exemption identification numbers. These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. See 86 Ill. Adm. Code 130.2007. (This is a GIL.)

December 23, 2003

Dear Xxxxx:

This letter is in response to your letter dated September 9, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I represent a business located in the state of Illinois that is in need of a written letter ruling that would answer several issues that they are faced with in their business. Because of the need to maintain confidentiality with its customers and competitors, I will use the term 'wholesaler' to define my client's business.

### STATEMENT OF FACTS

Wholesaler is engaged in the solicitation of wholesale sales to schools, clubs and other private and public organizations in connection with the fund raising activities of those organizations. Wholesaler is a for-profit business organized under the existing laws of the State of Illinois. Our products applicable to this ruling are varied and are evidenced by the brochure attached with this ruling request. Wholesaler solicits orders from the fund raising organization and then packs the order from its inventory of product and then delivers the order to the fund raising organization. Wholesaler is not related in any way to the supplier of the product or the fund raising organization.

Wholesaler sells to a wide variety of organizations that perform fundraising activities. Many of these fund raising activities are performed not only by schools but also organizations such as Parent Teacher Organizations, Parent Teacher Associations, Home & School Associations, school bands, DECA clubs, school student councils, and booster clubs. Organizations that we sell to that have fund-raising activities outside of the school are day-care centers, swim clubs, volleyball clubs all of which may be formed as profit or not-for-profit entities. For brevity, these organizations are referred to as FO (Fundraising Organization) in this statement of facts.

The following is a description of the actual transaction that occurs between Wholesaler and the FO.

- 1) Wholesaler provides the brochures and order forms to the FO at no charge to the FO.
- 2) FO takes orders from its ultimate consumer and then forwards the order forms to Wholesaler.
- 3) Wholesaler processes and packs the orders and delivers those orders to the FO.
- 4) The students, parents, friends etc. of the FO then distribute the orders to the ultimate consumer.
- 5) Wholesaler then invoices the FO for the products delivered to the FO and collects the amount invoiced. The invoiced amount to the FO is the wholesale price of the items sold (60% of the retail price less any applicable discounts) and the FO collects the full retail price of the items and keeps the profit.
- 6) Wholesaler then keeps the difference between the invoice from the supplier (its cost) and the amount received from the FO (its revenue).

## RULINGS REQUESTED

The rulings to be requested fall into three categories. The first category deals with a reaffirmation of what we believe to be the meaning of the rules and regulations regarding schools, parent teacher associations, parent teacher organizations and other support groups of the schools. If such groups are engaging in fundraising activities, are the following two assumptions correct with regard to the following facts:

- 1) That the school or school support groups are exempt from Retail Sales Tax if no more than 2 fundraising events occur where fundraising products are sold at these fundraising events to the general public. In conjunction with this statement, can we assume that if an organization gives us an exemption certificate, that we are not required to collect sales tax nor secure a resale certificate.
- 2) In the catalogues that we provide to the FO, which then gives them to the ultimate consumer, the suggested retail price is posted in that catalogue. Since this suggested retail price is significantly higher than what typical retailers charge for the same product, can we assume that the sale of our products by the FO are not in substantial competition with retail businesses, which if such competition did exist, would disallow the exempt status of the transaction.

The second category requests the department to provide the sales tax obligation for Wholesaler where the following organizations are the fundraising organization (FO) and Wholesaler is selling product to that FO. Specifically, if the FO is claiming that the

transaction is exempt, what if any information would be required to be retained in Wholesaler's file to support the claim for exempt status.

- 1) The FO is the school and is headed up by the principal
- 2) The FO is the Parent Teacher Association, Parent Teacher Organization, Home & School Association or other parent led organization of the school.
- 3) The FO is a school group such as the band, DECA club, or student council and is headed up by a teacher.
- 4) The FO is a school group as in (3) but the fundraising sale is headed up by a booster club (parents, students and friends).
- 5) The FO is a for-profit group such as a day-care center.
- 6) The FO is a non-school club such as a local swim club or volleyball club.

The third part of this ruling request revolves around the request by a local school district that has asked Wholesaler to act as the retailer to the end consumer. This school district does not want the responsibility of ROT liability for any of its transactions and does not claim any of its transactions to be exempt. The transaction is still the same as earlier stated except that Wholesaler must agree to accept all responsibility for collecting and remitting sales tax. In such a scenario, Wholesaler collects the retail price and then donates a portion back to the school. This appears to becoming an accepted approach by Wholesaler's competitors as put forth in the following example.

The following facts are applicable in understanding some of the methods that are being used by our competitors. The actual retail price of an item to be sold to an end consumer is \$10.00. This is the price the FO sells to that consumer. Assume that the Retailer's Occupation Tax is \$.60 on that retail price. Wholesaler sells the product to the FO for \$5.00.

- 1) FO collects from the end consumer \$10.00, which is the retail price of the product that includes the sales tax of \$.60. Wholesaler invoices the FO for the net price of \$5.00 plus the \$.60 sales tax or a total invoiced amount of \$5.60. The FO keeps the remaining \$4.40 as its profit. The Wholesaler remits the \$.60 sales tax to the Department and retains the remaining \$5.00 as its profit.
- 2) FO collects \$10.00 from the end consumer. Wholesaler invoices the FO the net price of \$5.00 plus sales tax of \$.30 on that \$5.00. The \$5.00 profit to the FO is considered a donation to the FO and so is not subject to ROT. Wholesaler then remits the \$.30 to the Department and retains the \$5.00 as its profit.
- 3) The FO collects from the end consumer \$10.00 plus the ROT of \$.60. The FO remits to Wholesaler the \$5.00 as invoiced by Wholesaler to the FO plus the ROT of \$.60 or \$5.60. Wholesaler then remits the ROT of \$.60 to the Department and retains the \$5.00 as its profit.

We therefore request the Department to rule on this transaction and determine whether Wholesaler can, within the framework of the rules and regulations, participate in such a transaction.

We realize that this is a comprehensive ruling request and we appreciate your response to this request. However, please understand that this is a highly competitive market and we are committed to follow the law even if our competitors put us in a market disadvantage.

## DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax applies to retail sales of tangible personal property unless the seller can document an exemption. If a seller is making a sale for resale, they are obligated to obtain valid Certificates of Resale from their purchasers. See 86 Ill. Adm. Code 130.1405.

Organizations that qualify as exclusively religious, charitable, or educational can apply to the Illinois Department of Revenue to obtain tax exemption identification numbers. These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. See 86 Ill. Adm. Code 130.2007.

While organizations and institutions that are both operated and organized exclusively for charitable, religious, or educational purposes are as a general matter subject to Retailers' Occupation Tax upon their own sales of tangible personal property, there are three limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity without incurring Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005(a).

Organizations that hold exemption numbers may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities without incurring Retailers' Occupation Tax liability. Please note that the prices charged by an organization that is significantly higher for the same products that are sold by retailers is not determinative, in and of itself, of whether the organization selling those products are in competition with other retailers. Organizations that engage in ongoing selling activities to the public must register with the Department as retailers, collect and remit tax on sales and provide suppliers with Certificates of Resale for items they sell.

Sales to schools and other youth organizations in connection with fund-raising projects require that each organization provide the seller with an "E" number if such sales are made two or fewer times a year. However, if the school engages in this type of fundraising more than twice a year, the school will need to provide the seller with a Certificate of Resale. See generally subsection (r) of 86 Ill. Adm. Code 130.2005. As you can see from the enclosed copy of Section 130.2006, however, teacher-sponsored student organizations are not subject to this event limitation.

The Department's administrative rules, in certain circumstances, do allow wholesalers to assume the responsibility for accounting and paying tax to the Department on sales made by retailers who sell items purchased from those wholesalers. See 86 Ill. Adm. Code 130.550. Please note that the scenario set out in your letter in regards to the collection of tax from the customer would require that the tax be computed on the entire \$10.00 selling price of the item. Use Tax must be separately stated from the selling price of the item sold and generally, absent special circumstances, cannot be included in the selling price of an item. See Section 150.1305.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton  
Associate Counsel

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